IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-5952

IN RE ESTATE OF SHERMAN GORDON,
Deceased,

DETA MONA TRIMBLE, and
JESSIE TRIMBLE,

Appellants,

VS.

JOSEPH ROOSEVELT GORDON, -
ETHEL MAE KING, Mother
WILLIAM GORDON,
HELLIE MAE GORDEY,
and MARY LOIS GORDON,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF ILLINOIS

MOTION TO AFFIRM OR DISMISS

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February 27, 1976

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Appellee Ethel King, defendant in the above action moves pursuant to Rule 16 of the Rules of this Court that the final judgment of the Supreme Court of Illinois be affirmed or, in the alternative, that this appeal be dismissed.

OPINION BELOW

The Illinois Supreme Court issued no written opinion in this cause. In an oral opinion the Illinois Supreme Court ruling from the bench, stated its decision here was based upon the case of In re Estate of Louis Karas, 61 Ill.2d 40 (June 2, 1975). A copy of said decision is attached hereto as Appendix A.

JURISDICTION

Appellant invokes the jurisdiction of this Court under 28, United States Code, Section 1257(2).

THE STATUTE INVOLVED

The statute involved in this suit, Illinois Revised Statutes, Ch. 3, Sec. 12, final paragraph (which is the portion of the statute that relates to illegitimate children):

> An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate.

QUESTIONS PRESENTED

Does the constitutionality of Section 12 of the Illinois Probate Act which creates a different scheme of inheritance for illegitimate children than for legitimate or legitimated children raise a question not passed on requiring a plenary review by this Court?

STATEMENT OF FACTS

This case involves the question of whether the illegitimate child of a man who died intestate is his heir for inheritance purposes. Sherman Gordon, a 28 year old resident of Chicago, died May 23, 1974, leaving no will. He was the victim of a homicide. His estate consisted of a 1974 Plymouth automobile, having a value of approximately $2,500. He died leaving no spouse, and appelant Deta Mona Trimble, 3 years old at the time of death, as his only descendent.

Appellant Jessie Trimble is a 30 year old woman residing in Chicago. She and Sherman Gordon lived together with their child, Deta Mona Trimble, from 1970 until his death, but they never intermarried. On January 2, 1973, the Circuit Court of Cook County, Illinois, entered an order, in the case of Jessie Trimble v. Sherman Gordon, 72 MC1-J846169, finding said Sherman Gordon to be the father of Deta Mona Trimble, and ordering him to pay $15 per week for her support. Sherman Gordon in his day-to-day activities publicly acknowledged Deta Mona Trimble as his child, and supported her pursuant to the said paternity order.

On July 25, 1974, Deta Mona Trimble, by her mother and next best friend, Jessie Trimble, filed a Petition for Letters of Administration, Determination of Heirship and Declaratory Relief in the Circuit Court of Cook County, Illinois. That court heard arguments as to the unconstitutionality of Illinois Revised Statutes, Ch. 3, Sec. 12, as it applies to illegitimate children, and also heard evidence as to the heirs of decedent Sherman Gordon.

On September 9, 1974, the court entered the Order Declaring Heirship, which provided that the only heirs of Sherman Gordon are his father, mother, brother, two sisters, and half-brother. In so doing it was held that Deta Mona Trimble was not the heir at law of Sherman Gordon. An appeal was taken from that order. The Illinois Supreme Court entered an order allowing direct appeal, thus by-passing the Illinois Appellate Court. The Illinois Supreme Court also granted leave to appellants to file an Amicus Brief in the case of In Re Estate of Louis Karas, which was then pending before the court. In that case, and its companion case, In re Estate of Robert Woods, illegitimate children whose fathers had died intestate challenged on constitutional grounds the same statute that is challenged herein.

On June 2, 1975, the Illinois Supreme Court issued its opinion in In re Estate of Louis Karas, 61 Ill.2d 40 (1975) upholding the statute and rejecting all arguments of its unconstitutionality, including the arguments made in the Amicus Brief of Appellants herein. A copy of said decision is attached hereto as Appendix A. On September 24, 1975, oral argument was held in the instant case before the Illinois Supreme Court, and Chief Justice Underwood orally delivered the opinion of the court from the bench saying the trial court judgment was affirmed, based upon the Karas holding. On October 15, 1975, the court issued its written order, effective September 24, 1975, affirming the trial court. It is from the order dated September 24, 1975, issued October 15, 1975, that this appeal is taken. On October 21, 1975, Justice Daniel P. Ward of the Illinois Supreme Court signed an order recalling and staying the mandate issued to the Circuit Court of Cook County on October 15, 1975, pending resolution of this appeal.

ARGUMENT

NO CONSTITUTIONAL OR SUBSTANTIAL FEDERAL QUESTION IS PRESENTED ON THIS APPEAL NOT PREVIOUSLY PASSED ON REQUIRING A FULL ARGUMENT BEFORE THE COURT.

A. Labine v. Vincent, Should Control The Determination Of This Case

The question raised on this appeal is whether a State may create a classification based on illegitimacy in providing for the intestate transfer of decedent's property when such classification is rationally related to a valid state interest. This Court has previously held in Labine v. Vincent, 401 U.S. 532 (1971), that state interests in protecting family life and in regulating the disposition of property left by decedents within a state are sufficient to permit distinctions in intestate succession statutes based on illegitimacy.

Appellants have argued that the probate statutory scheme of Louisiana, La.Civ.Code Ann.,(1952), coming before the Court in Labine v. Vincent, is extremely complex and disimilar to the Illinois Probate Act, Ill.Rev.Stat.,Ch.3.,(1975), and that therefore Labine should not be controlling. Indeed the Louisiana system is based on the French, Spainish and Roman civil codes while Illinois and all other States have systems based on the English Common Law. But classifications made by Louisiana which are Constitutional under the federal Constitution must be so in all theother States. Labine approved of a probate scheme which created distinctions both among illegitimate children and between legitimate and illegitimate children. Any classification made by Section 12 of the Illinois Probate Act dividing illegitimate children into different classes based on the sex of the deceased parent for inheritance purposes, must be upheld

under Labine if any legitimate state interests are thereby furthered. The majority opinion in Labine did not even invoke the minimal scrutiny which was developed by this Court to test equal protection arguments in the main text. [1]See 401 U.S. at 536, n.6. However, the Illinois Supreme Court in In Re Karas, 61 Ill.2d 41 (1975) used the rational relationship test in basing its opinion on Labine.

> "Under traditional concepts of Federal equal protection a legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose, and the burden of rebutting the presumptive validity of the classification rests upon the party challenging its constitutionality (citations omitted).
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>
> The Supreme Court noted that Louisiana's intestate succession scheme was rationally based on its interests to encourage family relationships and to establish a method of property disposition. (citations omitted). Petitioners and amicus argue that Illinois statutes fail to disclose this State's interest in the promotion of family relationships as did the Louisiana statutes. We cannot accept this hypothesis. And we do not believe that Illinois has any lesser interest than Louisiana in regulating the transfer of a decedant's property in its jurisdiction." In Re Karas, 61 Ill.2d 40, 47-48 (1975).

State legislatures, in the absence of specific constitutional guarantees, should be able to establish such a classification provided that it is related to a valid state purpose. It cannot be denied that the State of Illinois by seeking to avoid excess litigation, to promote the speedy disposition of property interests within the state and to protect decedent's estates from spurius claims, have such

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[1] "Even if we were to apply the 'rational basis' test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State." 401 U.S. at 536,n.6.

rational and valid interests. Since the Illinois Supreme Court has adhered to the traditional minimal scrutiny test in reviewing the statute involved, the standard in Labine has been readily met thus this appeal need not be fully argued.

B. Strict Scrutiny Is Not At Issue Since No "Fundamental Rights" Are Threatened Nor Is Illegitimacy a "Suspect Classification."

The "strict scrutiny" test cannot properly be applied to this appeal since it is evoked only where classifications effect "fundamental rights" or establish "suspect classifications"; it then requires that a "compelling governmental interest" be furthered by the classification and by the least drastic means available.[2] The Illinois Supreme Court reviewed the decisions of t[illegible] Court subsequent to Labine dealing with the issue of illegitimacy.

> "No decision has been cited in which a classification based on illegitimacy has been expressly held to be a suspect classification. Rather the decisions concerning illegitimacy previously set forth would seem to have been determined on whether or not the classification could be said to be predicated on a rational basis. In Jimenez v. Weinberger (1974),407 U.S. 628, 41 L.Ed.2d 363, 94 S.Ct. 2496, the Supreme Court stated it need not reach the argument as to whether a stricter equal protection standard was applicable in order to determine the validity of a classification premised on illegitimacy. In Re Estate of Karas, 61 Ill.2d 41,51 (1975)."

It is clear that illegitimacy is not an inherently "suspect classification" calling for rigorous scrutiny and justification by a State when included in an intestate succession statute.

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[2]San Antonio School District v. Rodriquez, 411 U.S.1, at 16-17 (1973). See also Police Department of Chicago v. Mosley, 408 U.S.92 (1972); Dunn v. Blumstein, 405 U.S.330 (1972); Shapiro v. Thompson, 394 U.S.618 (1969); Loving v. Virginia, 388 U.S.1 (1967); In re Griffith, 413 U.S.717 (1973); and Oyama v. California, 332 U.S.633 (1948).

There can be no challenge to Section 12 based on an argument that it discriminates invidiously on the basis of sex. The minor Appellant has no standing to claim that she is discriminated against based on the sex of her deceased parent since there is no sex distinction as to illegitimates who may inherit it. Nor may the mother of an illegitimate child complain that she is denied the benefits of intestate succession statute where she was not related to the decedent. Therefore no "suspect classification" is involved in this appeal.

Neither are any "fundamental rights" infringed by the operation of the statute in question.[3] There is no recognized right to inherit in Illinois since a parent is free to disinherit a child by will. Since there is no right to inherit neither can there be a right to support from the estate of a deceased parent in Illinois. Minor and dependent children do have a right to a child's allowance, Ill. Rev. Stat., Ch 3, Section 179 (1975), but this section is not now in question since the Appellant never moved the trial court to make provision for a child's allowance. Section 179, however, does not provide generally for the support of minor children but only for a nine month period following the death of a parent. It is true that had the minor Appellanr been a legitimate child she would have been able to inherit her father's entire estate since he died intestate. However, there can be no valid claim that there is present in Illinois a right for children to inherit from their fathers or to receive support from his estate for other than a nine month period, the constitutionality of which section is not now at issue. Therefore the rights involved can not be said to be "fundamental" and the strict scrutiny test is inapplicable to this appeal.

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[3] San Antonio School District v. Rodriquez, 411 U.S.1 (1973).

CONCLUSION

For the reasons set forth above, the opinion of the Illinois Supreme Court should be affirmed or in the alternative, this Appeal should be dismissed.

Respectfully submitted,

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APPENDIX A

For the reasons stated, the judgment of the appellate court is reversed, and the judgement of the circuit court of Bureau County is affirmed.

Appellate court reversed; circuit court affirmed.

Mr. Justice Ryan took no part in the consideration or decision of this case.

61 Ill.2d 40

In re ESTATE of Louis KARAS.

Mary SODERMARK, Appellant,

v.

Evangelia KARAS, Appellee.

In re ESTATE of Robert WOODS.

Margaret Marie COLLINS, Appellant,

v.

Addie WHEELER, Adm'r, Appellee.

Nos. 46986, 47092.

Supreme Court of Illinois.

June 2, 1975.

On petition to vacate a probate court order declaring that intestate left his widow surviving as his only heir at law and next of kin, the Circuit Court, Cook County, John J. Hogan, J., dismissed and decedent's illegitimate daughter appealed. The Appellate Court, 21 Ill.App.3d 564, 315 N.E.2d 603, affirmed and leave to appeal was granted. In a second proceeding, a decedent's illegitimate daughter sought letters of administration and a declaration of heirship, the Circuit Court struck and dismissed the petition, and direct appeal was granted. The appeals were consolidated. The Supreme Court, Kluczynski, J., held that the law permitting an illegitimate to inherit from the mother but not from the father is not unconstitutional.

Affirmed.

1. Bastards ⇐100

At common law, illegitimate could not inherit.

2. Constitutional Law ⇐70.1(6)

Supreme Court would not modify common law rule that acknowledged illegitimate may not be heir of intestate father's estate; expansion of inheritance rights must be left to legislative modification. S.H.A. ch. 3, § 12.

3. Constitutional Law ⇐211

For equal protection purposes, legislative classification will be upheld if it bears rational relation to valid governmental purpose and burden of rebutting presumptive validity of classification rests upon party challenging it; when classification affects fundamental right or involves suspect classification, burden is placed upon state to demonstrate that distinction is justified by compelling governmental interest.

4. Bastards ⇐101, 102

Constitutional Law ⇐208(3)

Illinois classification of illegitimates so as to permit inheritance from mother but not from father would not be tested by stricter constitutional standard requiring justification by compelling governmental interest, despite claims that classification is racially and sexually discriminatory and that illegitimacy is itself a suspect classification. S.H.A. ch. 3, § 12.

5. Bastards ⇐101, 102

Constitutional Law ⇐211

Illinois law permitting illegitimate to inherit from mother but not from father bears rational relation to valid governmental purpose and does not deny equal protection. S.H.A. ch. 3, § 12.

6. Constitutional Law ⇐42.2(1)

Questions of classification based on sexual differentiation may be raised by individuals who are thereby affected as a result of their own sex but could not be heard to challenge constitutionality of law permitting illegitimate to inherit from mother but not from father. S.H.A. ch. 3, § 12; S.H.A. Const.1970, art. 1, § 18.

7. Bastards ⇐102

Constitutional Law ⇐208(3)

Statute permitting illegitimate to inherit from mother is not unconstitutional as discriminating against surviving mother in preference to surviving father through ruling father immune from obligation of support. S.H.A. ch. 3, §§ 9, 11, 12.

8. Constitutional Law ⇐105(2)

Illegitimate children who were not denied equal protection by law prohibiting illegitimate from inheriting from intestate father were not deprived of due process by refusal to permit hearing wherein they might seek to establish paternity.

9. Executors and Administrators ⇐17(2)

Illegitimate daughter who could not inherit from her intestate father was not entitled to participate in administration of estate. S.H.A. ch. 3, § 96(2).

James R. Phelps and Wayne R. Anderson of Burditt & Calkins, Chicago, for appellant Mary Sodermark.

Mary Benedict Hooton, Chicago, for appellant Margaret Marie Collins.

Gerald W. Shea, Berwyn (Robert J. Lifton of Neistein, Richman, Hauslinger & Young, Ltd., Chicago, of counsel), for appellee Evangelia Karas.

Schwartzberg, Barnett & Schwartzberg, Goodman, Krasner & Kipnis and Zaiden, Berg, Hoffman & Schoenfeld, Chicago (Benjamin H. Cohen and Hugh J. Schwartzberg, Chicago, of counsel), for appellee Addie Wheeler.

Devereux Bowly, Charles Linn, James Weill and Jane Stevens of Legal Assistance Foundation, Chicago (John Henry Schlegel, Buffalo, N. Y., and Joseph Bonica, [illegible] Students, of counsel), for amicus curiae Dora Shaw Trimble and Jessie Trimble.

KLUCZYNSKI, Justice:

These consolidated appeals present the common issue of whether an acknowledged illegitimate child may inherit from her father who died intestate never having married the child's mother. A subsidiary issue involves the right of an illegitimate to be appointed the administrator of the estate under these circumstances.

The relevant sections of the Probate Act read as follows:

"Sec. 12. Illegitimates.

* * * * * *

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate." Ill.Rev.Stat.1973, ch. 3, par. 12.

"Sec. 96. Persons entitled to preference in obtaining letters.) The following persons are entitled to preference in the following order in obtaining the issuance of letters of administration * * *:

* * * * * *

(2) The children or any person nominated by them." Ill.Rev.Stat.1973, ch. 3, par. 96.

In cause No. 46986 Louis Karas died intestate. The circuit court of Cook County entered an order declaring Evangelia Karas, his widow, to be his only heir-at-law. Thereafter Mary Sodermark, petitioner, sought to vacate the order of heirship

claiming that she was the child of Louis Karas and Estelle Ross, who never married. The Sodermark petition alleged that Estelle Ross had been institutionalized for psychiatric reasons and apparently upon her release had disappeared. The petition further averred that Mary Sodermark had been acknowledged as the child of Louis Karas and that he had contributed to her support while she lived with as aunt. The petition asserted that Louis Karas and his wife, Evangelia, lived for a time with Mary Sodermark, her husband and family and that Louis Karas had contributed a downpayment to the purchase of the Sodermark's house. The circuit court granted Evangelia's motion to strike and dismiss the Sodermark petition. The appellate court affirmed (In re Estate of Karas, 21 Ill.App.3d 564, 315 N.E.2d 603), and we granted leave to appeal.

In cause No. 47092 Robert Woods died intestate at the age of 81. He left no surviving spouse and no legitimate children or descendants thereof. The circuit court of Cook County determined that there existed certain collateral heirs-at-law of the deceased. Margaret Marie Collins, petitioner, then attempted to obtain letters of administration and a declaration of heirship on her behalf. She asserted in her petition that she was the acknowledged illegitimate daughter of the deceased and a lawful heir to his $37,000 estate. The circuit court sustained the motion of certain collateral heirs-at-law to strike and dismiss the Collins' petition, and we granted direct appeal (50 Ill.2d R. 302(b), Ill.Rev.Stat.1973, ch. 110A, § 302(b)).

We have permitted the filing of an *amicus* brief in these consolidated cases. The *amicus* has pending in this court a direct appeal involving similar issues. (In re Estate of Gordon, No. 47339.) The illegitimate in *Gordon* is a minor. *Amicus* asserts that prior to the death of the unmarried father there had been a judicial order adjudicating paternity and ordering that he support this child.

As accepted by the motions to strike and dismiss the petitions, for the purpose of these appeals Mary Sodermark and Margeret Marie Collins are the acknowledged illegitimate children of the respective decedents, who never married the natural mothers. (Gertz v. Campbell (1973), 55 Ill.2d 84, 87, 302 N.E.2d 40). Thus they have not been legitimatized in accord with section 12 of the Probate Act, and under prior case law (Krupp v. Sackwitz (1961), 30 Ill.App.2d 459, 174 N.E.2d 877, appeal denied, 21 Ill.2d 621) are not considered heirs of their fathers, who died intestate.

[1] At common law an illegitimate could not inherit. (Blacklaws v. Milne (1876), 82 Ill. 505, 506.) By statute the result of this rule was ameliorated. (Ill. Ann.Stat., ch. 3, sec. 12, Historical Note, at 64 (Smith-Hurd 1961); see also 2 Horner, Probate Practice and Estates, secs. 1348, 1350–51 (4th ed. 1960).) In Smith v. Garber (1918), 286 Ill. 67, 121 N.E. 173, the court, in discussing the predecessor provisions of section 12 of the Probate Act, stated:

"'Sections 2 and 3 of our statute of descent were enacted for the purpose of obviating the undue severity of the common law and of erecting a rule more consonant with justice to an innocent and unfortunate class. Section 2 * * * abrogates the common law rule that an illegitimate is the child of nobody, and could not take property by inheritance, even from its own mother.' (Robinson v. Ruprecht, 191 Ill. 424, 61 N.E. 631.) Under the common law an illegitimate was considered *filius nullius*. 1 Blackstone's Com. *459. Under the statutes passed in this state in relation to illegitimate children, 'an illegitimate person is recognized as the child of his mother, as regards the descent of property.' Miller v. Williams, 66 Ill. 91. In Bales v. Elder, 118 Ill. 436, 11 N.E. 421, this court said that it was the purpose of the legislature in enacting the statute as to illegitimate children to remove the common law disability of inheritance and place them more nearly on a level with legitimates. See, also, Jenkins v. Deane, 121 Ill. 217, 12 N.E. 684; Chambers v. Chambers, 249 Ill. 126 [239 Ill. 136, 94 N.E. 198].) In Robinson v. Ruprecht, *supra*, this court said (191 Ill. p. 433 [61 N.E.[631] 634]): 'The rule [of the common law] visited the sins of the parents upon the unoffending offspring, and could not long survive the true sense of justice and liberal sense of charity that came with the advancing enlightenment and civilization of the race.' [Ill. 62, 70–71, 121 N.E. 173, 175.

[2] It is argued in the Sodermark appeal that this court modify the common law rule that an acknowledged illegitimate may not be an heir of the intestate father's estate. She urges that she be allowed to inherit to the extent of a legitimate child. This is not a tenable argument.

For nearly 150 years this State by statute has mitigated the effect of the common law rule prohibiting inheritance by illegitimates. While discussing other Probate Act provisions, this court has held that "The regulation of the descent of property and of the right to devise property, as well as the method of conveying and the manner of creating estates and the character and quality of estates created, is purely statutory and entirely within the control of the Legislature. [Citations.] Being wholly statutory, the rules of descent may be changed by the Legislature in its discretion and conditions or burdens may be imposed upon the right of succession." (Stelzhagen v. Trull (1926), 320 Ill. 382, 387, 151 N.E. 250, 252, see also Jahnke v. Selle (1938), 368 Ill. 268, 271, 13 N.E.2d 984.) Moreover, Miller v. Pennington (1915), 268 Ill. 220, 75 N.E. 919, involved litigation contesting certain property of the intestate decedent. He had fathered two illegitimate sons by a woman whom he subsequently married. The question presented concerned whether these sons could be declared to be legitimatized and could therefore share as heirs at law with the other legitimate children of the father. The descent statute, considered by the court (Hurd's Rev.Stat.1879, ch. 39, sec. 5) in determining whether these sons had been legitimatized, is presently incorporated within section 12 of the Probate Act. The court there held that the rights of the sons who had been born illegitimate were to be determined under the pertinent provision of the descent statute. The aforegoing authorities support the conclusion that expansion of inheritance rights of an illegitimate child in the estate of the father who dies intestate must be left to legislative modification. Therefore consideration of the applicability of the common law to intestate succession is of no relevance. Campbell v. McLain (1975), 318 Ill. 600, 612-13, 149 N.E. 481.

Petitioners and *amicus* urge that the statutory scheme which precludes the inheritance by an acknowledged illegitimate from the estate of the intestate father violates the Federal and State constitutional provisions guaranteeing equal protection and due process of law. In so arguing petitioners and *amicus* recognize the possible adverse implications of the United States Supreme Court decision in Labine v. Vincent (1971), 401 U.S. 532, 91 S.Ct. 1917, 28 L.Ed.2d 288.

In Labine v. Vincent the acknowledged illegitimate child had been precluded under Louisiana law from inheriting on an equal basis with legitimate children, if the father died intestate. It was argued that this statutory limitation was contrary to Federally secured rights to equal protection and due process. In a 5-to-4 decision the Supreme Court rejected these claims, stating that "the choices reflected by the intestate succession statute are choices which it is within the power of the State to make. The Federal Constitution does not give this Court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this

Court believe that they can provide better rules." (401 U.S. 532, 537, 91 S.Ct. 1017, 1020, 28 L.Ed.2d 288, 293). The Supreme Court further concluded that Louisiana's intestate succession laws had not created "an insurmountable barrier" to the acknowledged illegitimate child inheriting from the father. Alternatives existed, such as the execution of a will or marriage to the child's mother which would have obviated the bar to the inheritance. As later explained, Labine v. Vincent "reflected, in major part, the traditional deference to a State's prerogative to regulate the disposition at death of property within its borders. • • • The Court has long afforded broad scope to state discretion in this area." Weber v. Aetna Casualty & Surety Co. (1972), 406 U.S. 164, 179, 92 S.Ct. 1400, 1409, 31 L.Ed.2d 768, 776.

[3] Under traditional concepts of Federal equal protection a legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose, and the burden of rebutting the presumptive validity of the classification rests upon the party challenging its constitutionality. (People v. Sherman (1974), 57 Ill.2d 1, 4, 309 N.E.2d 562.) When the classification, however, affects fundamental rights (see Hoskins v. Walker (1974), 57 Ill.2d 503, 506, 313 N.E.2d 25), or involves a "suspect classification" (People v. Ellis (1974), 57 Ill.2d 127, 131, 311 N.E.2d 98), the burden is placed upon the State to demonstrate that the distinction is justified by a compelling governmental interest.

Petitioners and *amicus* expend much effort in attempting to refute the present application of Labine v. Vincent. They maintain that the rational bases suggested in that opinion to justify the classification cannot be applied in these cases. They also urge that other Supreme Court decisions have eroded the validity of that decision.

The Supreme Court noted that Louisiana's intestate succession scheme was rationally based on its interests to encourage family relationships and to establish a method of property disposition. (Labine v. Vincent, 401 U.S. 532, 536 n. 6, 91 S.Ct. 1017, 1019 n. 6, 28 L.Ed.2d 288, 292 n. 6.) Petitioners and *amicus* argue that Illinois statutes fail to disclose this State's interest in the promotion of family relationships as did the Louisiana statutes. We cannot accept this hypothesis. And we do not believe that Illinois has any lesser interest than Louisiana in regulating the transfer of a decedent's property in its jurisdiction. It is our opinion that petitioners and *amicus* have failed to detract from the impact of Labine v. Vincent in these regards.

Several Supreme Court decisions have been cited whose thrust is said to have severely lessened the present vitality of Labine v. Vincent. Petitioners and *amicus* cite Levy v. Louisiana (1968), 391 U.S. 68, 88 S.Ct. 1509, 20 L.Ed.2d 436, which invalidated a State law precluding illegitimate children from seeking a recovery for the wrongful death of their mother when such an action could be maintained by legitimate children, and Glona v. American Guarantee & Liability Insurance Co. (1968), 391 U.S. 73, 88 S.Ct. 1515, 20 L.Ed.2d 441, which nullified a statute that had been construed as prohibiting the mother of an illegitimate child from maintaining an action for his wrongful death. The Supreme Court, however, expressly found that the rationale of its prior decisions in *Levy* and *Glona* did not extend to the situation presented in Labine v. Vincent, 401 U.S. 532, 535, 91 S.Ct. 1017, 1019, 28 L.Ed.2d 288, 292. Petitioners and *amicus* further cite Weber v. Aetna Casualty & Surety Co. (1972), 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768, which held that a dependent unacknowledged illegitimate child could not be deprived of workmen's compensation benefits accruing to dependent legitimate children as a result of the death of the natural father; Gomez v. Perez (1973), 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56, which precluded a State from denying re-

lief to an illegitimate child seeking support from his natural father when such relief was afforded to a legitimate child; New Jersey Welfare Rights Organization v. Cahill (1973), 411 U.S. 619, 93 S.Ct. 1709, 36 L.Ed.2d 543, which voided certain statutory provisions of a State aid program to families limiting benefits to married couples with minor children, thereby, in effect, denying benefits to illegitimate children; Jimenez v. Weinberger (1974), 417 U.S. 628, 94 S.Ct. 2496, 41 L.Ed.2d 363, which held unconstitutional a statutory program denying benefits to illegitimate children born after the onset of the parent's disability, while permitting benefits to illegitimate children who were similarly born, if the latter group of children could inherit under State intestacy laws, could be legitimated under State law or were considered illegitimate only as a result of a formal defect in their parents' marriage.

We have examined these decisions and do not find the constitutional impact of Labine v. Vincent to have been lessened. As previously set forth, Weber v. Aetna Casualty & Surety Co. explained Labine v. Vincent, and expressed no dissatisfaction with that decision.

In asserting that the present Illinois classification of illegitimates is violative of Federal constitutional principles, petitioners and *amicus* recommend that this court apply the stricter equal protection test which would require the State to justify the classification by a compelling governmental interest. It is claimed that the present classification is racially and sexually discriminatory and that illegitimacy is itself a suspect classification, thereby necessitating application of the stricter constitutional standard.

In support of the position that the statutory framework is racially discriminatory, petitioner in cause No. 47092 sets forth various statistical sources which she says indicate that an excessively disproportionate share of illegitimate children were born to blacks and other minorities as compared to Caucasians. In light of these statistics this petitioner concludes that section 12 of the Probate Act has evolved to the extent that it "fits into a pattern of legislation which often is only a thinly disguised cover for racial discrimination." A comparable claim of racial discrimination, predicated on similar statistics, was presented by the *amicus* in Labine v. Vincent with no apparent success. Moreover, section 12 of the Probate Act does not contain any racial classification and affects all members of the class of illegitimates without regard to racial heritage. Such a statute, without more, would not appear in and of itself to substantiate a claim that it is racially discriminatory merely because the bare statistical possibility exists that at any given time it could incidentally tend to affect to a greater extent a particular racial group within the general class. The alleged deprivation of which petitioner complains is remedied through the simple expedient of testamentary disposition by means of a will. And no claim is advanced that any racial group is restricted in any judicially cognizable manner from utilizing this procedure.

The argument that section 12 sexually discriminates so as to give rise to a stricter approach to Federal equal protection principles is also unpersuasive. We are cognizant of the recent decision wherein the Supreme Court struck down a Social Security provision which had precluded survivor's benefits to an unemployed widower who remained at home to care for his minor child, while permitting such payments to a similarly situated widow. The court there held that this classification was not rational under the statute's intended purpose. (Weinberger v. Wiesenfeld (1975), — U.S. —, 95 S.Ct. 1225, 43 L.Ed.2d 514.) However, while the claim is made that a classification by sex requires a more stringent application of equal protection principles, we find that only four members of the Supreme Court have accepted this position. (Frontiero v. Richardson (1973), 411

U.S. 627, 93 S.Ct. 1763, 36 L.Ed.2d 583 (plurality opinion); see also Stanton v. Stanton (1975), — U.S. —, 95 S.Ct. 1373, 43 L.Ed.2d 688; Schlesinger v. Ballard (1975), 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (Brennan, J., dissenting); Kahn v. Shevin (1974), 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (Brennan, J., dissenting). We are unwilling to decide that all classifications based upon sex require that the state establish a compelling governmental interest under the Federal equal protec-

[4] No decision has been cited in which a classification based on illegitimacy has been expressly held to be a suspect classification. Rather the decisions concerning illegitimacy previously set forth would seem to have been determined on whether or not the classification could be said to be predicated on a rational basis. In Jimenez v. Weinberger (1974), 417 U.S. 628, 94 S.Ct. 2496, 41 L.Ed.2d 363, the Supreme Court stated it need not reach the argument as to whether a stricter equal protection standard was applicable in order to determine the validity of a classification premised on illegitimacy. Moreover, the *amicus* brief filed in Labine v. Vincent suggests the argument was advanced that stricter equal protection principles be utilized when reviewing a classification based on illegitimacy. This for several of the comparable reasons expressed in our discussion of the issues regarding alleged race and sex discrimination stemming from application of section 12 of the Probate Act, we are unable to presently conclude that a classification based on illegitimacy is a suspect classification under Federal constitutional interpretation.

The precise issue set forth in Labine v. Vincent is present in these appeals, *i. e.*, can an acknowledged illegitimate be treated differently than a legitimate child and thereby, in effect, be precluded from sharing in its father's estate by State laws governing intestate succession. In each of these specific appeals to "nourmountable barrier" to Mary Soderstarl and Margaret Marie Collins sharing in their fathers' estate has been created. In both instances the deceased fathers apparently lived for a substantial number of years. Since Louis Karas was survived by his spouse, he could have devised as much as two thirds of his estate to Mary Soderstarl. (Ill.Rev.Stat. 1973, ch. 3, par. 16; see Montgomery v. Michaels (1973), 54 Ill.2d 532, 534-5, 301 N.E.2d 468.) Because Robert Woods had no surviving spouse, he could have left his entire estate to Margaret Marie Collins if he had utilized the simple formalities of a will.

We further recognize that the State maintains an interest in prohibiting spurious claims against an estate. The parties to these appeals tend to agree that proof of a lineal relationship is more readily ascertainable when dealing with maternal ancestors. It is suggested that proof of paternal relationship may not be so readily ascertainable but that such considerations should be decided individually on the facts of each case. While establishing paternity in a proceeding to determine heirship is possible, situations may arise which are fraught with fraudulent circumstances. There exists the possibility that an illegitimate "grandson" may seek to inherit from his "grandfather" who dies not only intestate but also after the death of his own son and without knowledge of the existence of the illegitimate. Similar circumstances might also arise in which illegitimates, claiming a collateral relationship, would seek rights to the estates of paternal intestate kindred. (See generally Gregory v. County of La-Salle (1968), 91 Ill.App.2d 290, 234 N.E.2d 66.) There also may be situations in which a "father's" testamentary disposition is challenged on behalf of an illegitimate child who was born after the will was executed, thereby possibly permitting the child to recover a share of the estate equivalent to that allowed if the "father" had died intestate. Ill.Rev.Stat.1973, ch. 3, par. 48; 2

Horner, Probate Practice and Estates sec. 1331 (4th ed. 1960).

[5] In summary, to accept the numerous arguments raised by petitioners and *amicus* in regard to Federal equal protection principles would result in this court's placing strictures on Labine v. Vincent, *supra*. Of course, a State may not impose such greater restrictions as a matter of *federal constitutional law* when this Court [United States Supreme Court] specifically refrains from imposing them." (Emphasis in original.) Oregon v. Haas (1975), — U.S. —, —, 95 S.Ct. 1215, 1219, 43 L.Ed.2d 570, 576.

There remains the contention that section 12 of the Probate Act is unconstitutional because it violates State constitutional guarantees that "equal protection of the laws shall not be denied or abridged on account of sex * * *." (Ill.Const. (1970), art. I, sec. 18, S.H.A.) In People v. Ellis (1974), 57 Ill.2d 127, 132-33, 311 N.E.2d 98, we construed this provision as rendering any classification based on sex to be a "suspect classification," thus subjecting it to "strict judicial scrutiny" and requiring the existence of a compelling State interest to justify the classification. See also Phelps v. Bing (1974), 58 Ill.2d 32, 316 N.E.2d 775.

Petitioner in cause No. 47092 first claims that section 12(4) of the Probate Act discriminates against the father and his descendants when his illegitimate child dies intestate leaving no spouse or descendants. If this situation occurs, petitioner says the father and his descendants are precluded from sharing in the child's estate while the mother and her descendants may share in the estate. A comparable attack is made upon sections 12(5) to 12(7), which generally concern inheritance from the estate of an illegitimate by maternal kindred while omitting consideration of paternal kindred. Petitioner also maintains that section 12 requires a mother to draw a will in order to disinherit her children while a father of an illegitimate child, who is not legitimized by the procedures of section 12, need not do so. Conversely, if the father of the illegitimate wishes the illegitimate child to share in his estate he must execute a will, whereas the mother need not resort to this course of action. Finally, petitioner argues that she is injured by limiting her inheritance to the estate of her mother who dies intestate or her maternal ancestors and by precluding her inheritance from her father or his ancestors. She claims that she should either inherit from both or inherit from neither, and she concludes that as a result of section 12 of the Probate Act she is injured by the sexual discrimination against each of her parents.

No contention is asserted that section 12 of the Probate Act results in any sexual discrimination as between similarly situated males and females who seek inheritance from the estates of their fathers or other paternal kindred. Under section 12 no discrimination inures to an illegitimate as a result of the illegitimate's sex. The question therefore presented in whether under these circumstances one may assert a claim of discrimination based upon the sex of another person pursuant to section 18 of article I of the State Constitution.

[6] In our decisions of *Ellis* and *Bing* the individuals were treated differently on the basis of their sex because of classifications in the Juvenile Court Act and Marriage Act. Neither case involved a situation wherein the affected individuals asserted a constitutional deprivation based solely on the sex of another person, as in these appeals. The official explanation of section 18 of article I recites that "no government in Illinois may deny equal protection of the law to anyone because of his or her sex." (7 Record of Proceedings, Sixth Illinois Constitutional Convention 2688.) This explication indicates that State constitutional issues raising questions of classifications based on sexual differentiation may be raised by in-

dividuals who are thereby affected as a result of their own sex. For this reason, we are of the opinion that petitioner's State constitutional claim is without merit.

[7] *Amicus* argues that both parents have a duty to support a child and if one parent dies the survivor's duty is necessarily increased. *Amicus* says that section 12 invidiously discriminates against the surviving mother in preference to the surviving father of the illegitimate child. It is argued that the father is aided in his obligation of support because the child may inherit from the mother. Conversely, *amicus* argues, the mother is not aided and, in fact, is burdened, for the child cannot inherit from the father and support from the father is no longer available. *Amicus* concludes that section 12 "discriminates against women by failing to provide for their children a legal right of inheritance equivalent to that granted to the children of surviving male parents." To buttress this argument *amicus* refers only to sections 9 and 11 of the Probate Act (ch. 3, pars. 9 and 11), which *amicus* asserts are designed to prevent a decedent's closest relatives from becoming wards of the State.

We have examined these provisions and are unable to interpret these sections as intending to create a statutory scheme for financial support. Section 9, in pertinent part, merely says that the Probate Act shall be liberally construed. Section 11 establishes an intestate succession for the devolution of property not involving illegitimates. There is no basis evident from the language employed in either section which permits an interpretation that these provisions were intended to alleviate the possibility that certain close relatives of the decedent would seek public assistance. Obviously the application of section 11 provides the basis wherein certain relatives may assure their living standard or even elevate it by their inheritance. But this provision also allows inheritance to wealthy relations to the exclusion of impoverished individuals who may be only slightly more remote in their relationship to the decedent. Moreover, relations of equal degree similarly inherit even though there may exist extreme divergence in their financial status.

[8] Having concluded that the petitioners were not denied equal protection of the law, we do not find that they were deprived of due process of law by the trial courts' refusals to permit a hearing wherein they might seek to establish the paternity of the decedents. *Cf.* Stanley v. Illinois (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551.

[9] There remains the contention advanced by petitioner in cause No. 47092 that she has a preference in issuance of letters of administration as set forth in section 96(2) of the Probate Act (ch. 3, par. 96(2)). In determining that petitioner may not inherit from her father under the circumstances presented in this case, we do not believe it logical that she should be allowed to participate in the administration of his estate. See Myatt v. Myatt (1867), 44 Ill. 473, 476.

Accordingly, the judgment of the appellate court in cause No. 46986 is affirmed. The judgment of the circuit court of Cook County in cause No. 47092 is affirmed.

Judgments affirmed.